

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GUSTAVO LOYA

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 228,061

ORDER

Respondent requested Appeals Board review of the preliminary hearing order entered by Administrative Law Judge Kenneth S. Johnson on December 16, 1997, as contained in the preliminary hearing transcript.

ISSUES

At the conclusion of the December 16, 1997, preliminary hearing, the Administrative Law Judge announced that claimant had proven that his current symptoms consisting mainly of dizziness, lightheadedness, and headaches were related to chemical exposure at work. The Administrative Law Judge went on and granted claimant's request for medical treatment and temporary total disability compensation. The Administrative Law Judge did not enter a separate preliminary hearing order but announced that his order contained in the preliminary hearing transcript would constitute his preliminary hearing order. From that preliminary hearing order, the respondent appealed raising the issue of whether claimant suffered an accidental injury from the alleged chemical exposure at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the respondent is an issue that grants Appeals Board review of preliminary hearing orders. See K.S.A. 1997 Supp. 44-534a.

Claimant was employed by the respondent as a drum operator on June 14, 1997, the date of claimant's alleged chemical exposure. Claimant's job duties required him to work in an environment where sulfuric acid was used to process animal hides. The sulfuric acid emitted dangerous hydrogen sulfide gases into the work environment. Claimant contends the exposure to such gases caused him to faint at his home on June 14, 1997. Claimant also fainted outside St. Catherine Hospital emergency room on August 14, 1997. At that time, claimant had brought his stepfather to the emergency room for a finger amputation. Claimant again fainted after work on August 20, 1997. Claimant complains of having headaches, chest pains, weakness, dizziness, and fatigue. As he worked around the chemical gases, these symptoms would commence and they would worsen over the period of his work shift.

Claimant was first treated by respondent's physician, Myron J. Zeller, M.D. Dr. Zeller then referred claimant to another local Garden City, Kansas, physician, Able S. Cruzado, M.D. Dr. Cruzado's medical records were admitted into evidence at the preliminary hearing. These records show claimant was treated by Dr. Cruzado for dizziness and lightheadedness symptoms from June 24, 1997, until October 10, 1997. Dr. Cruzado's medical notes indicated he consulted with Dr. Douell, a clinical toxicologist at the University of Kansas Medical Center (UKMC) by telephone. Dr. Douell concluded the possible explanation for claimant's symptoms was his exposure to the hydrogen sulfide gas. Claimant was taken off work on June 24, 1997, and claimant's condition improved while he was off work and not exposed to the chemicals.

However, Dr. Zeller, the respondent's physician, returned claimant to his regular job on August 18, 1997, with further exposure to the chemicals. Claimant's symptoms worsened from the exposure and he suffered another fainting spell on August 20, 1997. Claimant returned to Dr. Cruzado on August 21, 1997, and Dr. Cruzado again took claimant off work. On the date of the preliminary hearing, December 16, 1997, at the recommendation of Dr. Cruzado, the respondent had returned claimant to work on November 19, 1997, to a job in an area not exposed to chemicals.

Claimant was also referred to the UKMC for testing and examination on September 16, 1997. The medical records from the UKMC suggested claimant may have an upper airway disfunction. However, the report did not state a cause for the disfunction. Also, the report completed by J. Thomas Pierce, Ph.D., cited another report that indicated chronic exposure to hydrogen sulfide gas even at low levels may produce symptoms including fatigue, headaches, dizziness, and irritability.

Respondent contends claimant has not produced any evidence in the preliminary hearing record to prove his current symptoms have a causal relationship to his employment. Respondent points out that claimant was seen on June 18, 1997, only four

days after his fainting spell, by Eric R. Oppliger, M.D., for bilateral ear infection. Respondent also points out that none of the objective testing done either in Garden City or at the UKMC were positive for chemical contamination. Respondent further argues that the reason for claimant's complaints is that he is a malingerer.

The Appeals Board finds that the preliminary hearing record as a whole proves that claimant's symptoms of dizziness, headaches, and lightheadedness are more likely than not caused by claimant's exposure to chemicals at work. This conclusion is supported by claimant's testimony and Dr. Cruzado's treatment records of claimant. Claimant improved when he was not working and was thus not exposed to the hydrogen sulfide gas. Claimant again showed the same symptoms when he was returned by respondent's physician to work for three or four days in August. Although the UKMC tests were inconclusive, they did indicate that exposure to hydrogen sulfide gas even at low levels over a period of time could cause symptoms such as fatigue, headaches, and dizziness.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order of Administrative Law Judge Kenneth S. Johnson dated December 16, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Craig A. Posson, Dakota City, NE
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director